



# Civil Resolution Tribunal

Date Issued: July 11, 2018

File: SC-2017-006319

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Salthouse v. Trilinks Communications Inc.*, 2018 BCCRT 320

**B E T W E E N :**

James Salthouse

**APPLICANT**

**A N D :**

Trilinks Communications Inc.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

### **INTRODUCTION**

1. This is a dispute about a nail the applicant James Salthouse found in his car's tire. He says the respondent Trilinks Communications Inc. is responsible because their workers were working in the applicant's parking spots and after they left the applicant found the nail. The parties are each self-represented.

## **JURISDICTION AND PROCEDURE**

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
4. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

6. The issue in this dispute is whether the respondent is responsible for the nail the applicant found in his car's tire, and if so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

7. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

8. The applicant says the respondent was contracted to install an antenna near the applicant's assigned parking spot, and so the building management asked the applicant to park elsewhere while the respondent worked on the roof. The parties agree the respondent did the antenna installation work between September 17 and 23, 2017. After receiving a letter that the respondent was finished, the applicant parked in his spot but then when he went to leave found his tire flat with the nail in it.
9. The applicant seeks \$1019.86 to replace his rear tires, one of which was damaged by the nail. In addition, he seeks \$66.15 for towing costs and \$16.25 for the one week he did not have access to his parking spot. The applicant provided a photo of his tire with a nail sticking about 2" out of the sidewall. I cannot tell from the photo the type of nail, but the respondent says it determined that it was specific to a "nail gun" used by framers and roofers, and notes the spirals on the nail shank. I agree the nail in the tire has no head on the end sticking out, but has the spiral the respondent describes. The respondent says its inventory does not contain nails. The respondent notes the building construction and roofing taking place near the area, and claims those workers have the 'nail gun' nails on hand for their roofing projects.
10. The respondent also says that its foreman is adamant there were no nails involved in this site build and does not believe the respondent's crew left behind a nail. The respondent provided a photo of a screw that it uses in its inventory.
11. The applicant produced other photos showing a few nails in boards that appeared to be forming a perimeter around groundworks. These nails do not appear to be the same type as the one found in the applicant's car, because they have a head on the end. There is also no indication in these photos that these groundworks boards were related to the respondent's antenna installation work. The applicant did not address the respondent's submission about other building construction and roofing works being done by other workers around the same time.

12. The applicant also produced undated photos showing a worker, without any sort of company identification shown in the photo, leaning over the boards with the headed-nails. The respondent says these photos were taken months after the September 23, 2017 nail was found in the applicant's tire. I find these photos do not prove the respondent was using the type of nail found in the applicant's car tire or that the respondent negligently left such a nail behind.
13. The applicant says at first the respondent agreed to pay for his claimed repair. However, he says the respondent then told him they do not use nails and therefore the respondent would not pay anything. I agree with the respondent that simply asking for a copy of the applicant's invoice does not indicate their agreement to pay it. I also do not agree with the applicant that the respondent's receptionist guaranteed payment of his expenses or that he would have reasonably believed she was in a position to offer such a guarantee.
14. The respondent says the applicant's claim is circumstantial at best and denies that it is responsible for the nail in the applicant's tire and that it caused the flat. I accept that the nail caused the applicant's flat tire. However, on balance, I find the applicant has not proved that the respondent negligently left that nail behind. I find the applicant's claims must be dismissed.
15. In accordance with section 49 of the Act and the tribunal's rules, as the applicant was unsuccessful I find he is not entitled to reimbursement of tribunal fees or dispute-related expenses.

## **ORDER**

16. I order that the applicant's claims and therefore this dispute are dismissed.

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Shelley Lopez, Vice Chair